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No. 189

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

THE CONNECTICUT LIGHT AND POWER COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

BRIEF FILED ON BEHALF OF THE STATE OF CONNECTICUT, AS AMICUS CURIAE

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Respondent.

BRIEF FILED ON BEHALF OF THE STATE OF CONNECTICUT, AS AMICUS CURIAE.

Foreword.

This case involves a local electric distributing company which purchases electric energy for the supply of a small portion of its distributing system in the State of Connecticut, the electric energy being supplied by another company, partly (the Commission has found) from sources outside of the State, and being received by the distributing company within the State for local retail distribution therein.

Congress, when it enacted the Federal Power Act, did not intend that the Federal Power Commission should possess regulatory powers with respect to such a company; on the contrary it was intended, under the provisions of the Act, that the State should possess exclusive jurisdiction to regulate such local distributing companies.

NOTE: For convenience, The Connecticut Light & Power Company will be referred to in this brief as "the Company" and the Federal Power Commission will be referred to as "the Commission." The use of italics in quoted excerpts indicates emphasis supplied by the writers of this brief.

The State of Connecticut believes that the assertion by the Commission of current jurisdiction over the Company in the present case represents an unwarranted and illegal invasion of the powers of the State to regulate its local distributing companies, which powers were clearly intended to be preserved to the State under the provisions of the Federal Power Act.

On May 29, 1935, prior to the enactment of the Federal Power Act, the State of Connecticut enacted additional statutory provisions for the regulation of local public utility companies, the purpose of which is stated therein as follows:

> "The general purposes of this Act are to assure to the State of Connecticut its full power to regulate its public service corporations, to increase the powers of the Public Utilities Commission, and to promote local control of the public service corporations of this State, and it shall be so construed as to effectuate these purposes." (Connecticut Public Acts of 1935, ch. 191.)

Section 6 of said Act (Cumulative Supplement (1935) §1414 (e), cl. f, p. 592) provides in part as follows:

> ". . . No gas, electric or water company, or holding company, or any official, board or commission purporting to act under any governmental authority other than that of this state or of its divisions, municipal corporations or courts, shall interfere with or attempt to interfere with or exercise authority or control over any gas, electric or water company incorporated by this state and engaged in the business of supplying service within this state, or with or over any holding company incorporated by this state and doing the principal part of its business within this state, without having first obtained the approval of the commission, except as the United States may properly regulate actual transactions in interstate commerce. Any action contrary to the provisions of this section shall be voidable on order of the commission."

The State of Connecticut has a Public Utilities Commission which possesses jurisdiction over local public utility companies and exercises many of the same regulatory powers with respect thereto which the Federal Power Commission is authorized to exercise over "public utilities" subject to its jurisdiction under the Federal Power Act. In view of the duality of regulation thus engendered, and because of the possibility that conflicts of decision may arise between the state and federal agencies, it is believed that the State of Connecticut possesses a vital interest in the important public questions involved in this case.

Accordingly, the State of Connecticut files this brief as *amicus curiae* in support of the position taken by the Company herein.

Preliminary Statement

On May 15, 1942, the Federal Power Commission determined that the Company "was," during various periods since the effective date of the Federal Power Act, and "*continues to be*" a "public utility" under the Act, and made an order directing the Company to "comply" with the Commission's system of accounts and general accounting orders applicable to such a "public utility".

Determination as to present status. The determination of the Commission with respect to the present status of the Company, and the order directing current compliance with the accounting requirements, were founded upon the ownership and operation by the Company of certain facilities located in a substation at Bristol, Connecticut, by which the Company receives into its local electric system there, electric energy purchased by it from the Connecticut Power Company, an independent and unaffiliated corporation. Although not called for by the Company's arrangements with its vendor, such energy was found to include, at times, electric

energy originating in the State of Massachusetts. The energy so received is sold and distributed by the Company at retail to local consumers in its Bristol district, wholly within the State of Connecticut.

Determination as to past status. Since the State of Connecticut is interested primarily in the Commission's claim to current general jurisdiction over the Company (i.e. at the time of the making of the Commission's determination) and since the Commission predicated such claim solely upon the ownership and operation by the Company of its facilities at Bristol, Connecticut, we shall not discuss herein the situations which existed prior to the hearing and determination of the Commission, with reference to the East Hampton, Torrington-Winsted, and Groton districts of the Company.

Reference to Opinions Below

The findings, opinion and order of the Federal Power Commission are reported unofficially at 44 P.U.R. (N.S.) 170. The opinion of the Court of Appeals for the District of Columbia is reported at 141 F. (2d) 14.

The Questions Involved

The question in which the State of Connecticut is interested is the following:

Whether, under the provisions of the Federal Power Act, a local *distributing* company, operating and *distributing* electric energy for local retail consumption wholly within the State, is a "public utility" subject to the broad regulatory powers of the Federal Power Commission, because such company owns or operates facilities by which it receives within the State, for local *retail distribution* therein, electric

energy purchased from others, and a portion of such energy, through interconnections maintained by the vendors and over which the local company has no control, originates in another state.

Statement of the Case

A. THE FACTS.

The principal facts of the case are set forth in the brief filed on behalf of the Company, and for the sake of brevity, we shall not repeat them here except for a brief reference to the facilities upon which the Commission based its assertion of current jurisdiction over the Company and its accounts.

The facilities owned and operated by the Company used to receive electric energy for the supply of its Bristol District were the *only* facilities owned and operated by the Company at the times of the hearing and determination of the Commission, through which electric energy from Massachusetts was found to pass at such times.

B. THE DETERMINATION OF THE COMMISSION AS TO PRESENT STATUS OF THE COMPANY.

The Commission determined that the aforementioned facilities owned and operated by the Company at Bristol were "used for the transmission of electric energy . . . as distinguished from local distribution thereof," and that "from January 1, 1937 *to the present time*," the Company "*was and continues to be*" a "public utility" under the Federal Power Act.

Thus, while the Commission, with reference to the Company's East Hampton, Torrington-Winsted and Groton Districts, determined that the Company "was" a "public utility"

during specified periods ending prior to the hearing and determination, the Commission determined that the Company was and is presently under its jurisdiction by reason of the Company's present ownership and operation of the facilities at Bristol. The Commission's finding No. 19 reads as follows (R. 69):

> "(19) From January 1, 1937, *to the present time* the Respondent has continuously owned and operated and *now owns and operates* facilities in Bristol, Connecticut, for the transmission of electric energy, transmitted from the State of Massachusetts and consumed in the State of Connecticut by persons other than the transmitter thereof, which facilities were *and are* facilities for the transmission of electric energy in interstate commerce and Respondent was *and continues to be, by virtue of its ownership and operation of such facilities, a public utility within the meaning of that term as used in the Federal Power Act.*"

In accordance with such determination, the order of the Commission purports to direct compliance with its system of accounts and various accounting orders up to the moment of its determination and in the future.* The Commission's order, dated May 15, 1942, which incorporates the Commission's findings as a part thereof, provides, in part:

> "(A) The Respondent is hereby required to *comply* with the aforesaid Order No. 42, order of May 11, 1937, and the other orders supplemental to said Order No. 42; and *to comply* with the accounting

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* The Commission's intention to direct *current compliance* with its accounting orders and system of accounts is clear from its brief to the Court below. After referring to its findings based on the situation in petitioner's Bristol district, the Commission's brief stated:

> "On these findings there can be no doubt as to the *continuing* power of the Commission to require petitioner as a "public utility" to keep its accounts *henceforth* in accordance with the prescribed original cost accounting system *as directed by the order under review*, in addition to completing the original cost and reclassification studies."

> requirements prescribed thereby, *applicable to it as a public utility* within the meaning of that term as used in that act, as of the effective dates of such orders."

C. THE DECISION OF THE COURT BELOW.

The Court of Appeals held that the Company "*is* a public utility under the Act," without reference to the question of whether its status may have changed since the effective date of the Act.

The Court did not rest its decision, with respect to the Company's *receipts* of electric energy originating outside of the State of Connecticut, upon the determination of the Federal Power Commission that facilities owned and operated by the Company "were facilities for the transmission of electric energy . . . as distinguished from local distribution thereof." Despite the specific exemptions of various facilities from the jurisdiction of the Commission, as contained in section 201 (b) of the Federal Power Act, including "facilities used in local distribution" the Court held that the distinction made by the Commission was unimportant. Thus, the Court said:

> "Therefore, whether or not the facilities by which petitioner *distributes* energy from Massachusetts should be classified as 'local' *is not relevant to this case.* The sole test of jurisdiction of the Commission *over accounts* is whether these facilities, *'local' or otherwise,* are used for the transmission of electric energy from a point in one state to a point in another."

ARGUMENT

POINT I

The company is not a "public utility" under the act, by reason of the sole remaining connection at Bristol, I. E. at the time the commission made its determination.

A. IT IS NOT THE PURPOSE OF THE FEDERAL POWER ACT TO REGULATE LOCAL DISTRIBUTING COMPANIES WHICH MAY RECEIVE AND DISTRIBUTE, WITHIN THE STATE, ELECTRIC ENERGY ORIGINATING IN ANOTHER STATE.

At the time of the enactment of the 1935 amendments to the Federal Power Act, there was a well-defined "no man's land" in the field of electric utility regulation, in which the states were without regulatory power and the Federal government had not exercised its regulatory authority.

Public Utilities Commission v. Attleboro Steam Co., 273 U. S. 83

In the *Attleboro* case, *supra*, this Court held that the sale at *wholesale* of electric energy generated in one state, and the delivery thereof at the state line to a distributing company which sold and distributed the energy at retail in an adjoining state, constituted interstate commerce and that the attempted regulation of the wholesale rates by the state of production constituted a direct burden on such commerce, and so was not within the power of such state.

In order to occupy this "no man's land", Congress enacted the 1935 amendments to the Federal Power Act. Thus, in *Jersey Central Power & Light Co. v. Federal Power Commission*, 319 U. S. 61, 67, the Court said:

"The primary purpose of Title II, Part II of the 1935 amendments to the Federal Power Act, . . . was to give a federal agency power to regulate the sale of electric energy across state lines. Regulation of such sales had been denied to the states by *Public Utilities Commission v. Attleboro Steam Co.*, 273 U. S. 83."

The operations of the Company in the present case, at Bristol, do not fall within the scope of the *Attleboro* decision. The Company does not sell electric energy at wholesale to a distributing company in another state, nor does it deliver electric energy at the state line to another company for distribution in another state. On the contrary, the Company here uses all of the energy purchased from the Connecticut Power Company wholly for local retail distribution in the State of Connecticut.

In similar circumstances, where gas distributing companies purchased supplies of gas from the receivers of interstate companies which transported the gas from other states, and took delivery within the state of consumption, this Court has held that the interstate movement of the gas ceased with its delivery to the local companies, and that their retail rates were subject to regulation by the states.

". . . . *in no proper sense can it be said*, under the facts here disclosed, that sale *and delivery of gas to their customers at burner-tips* by the local companies operating under special franchises *constituted any part of interstate commerce*. The companies *received supplies* which *had* moved in interstate commerce and then disposed thereof *at retail* in due course of their own *local* business. . . . The thing which the receivers actually did was to *deliver* supplies to *local companies*. Exercising franchise rights, the latter *distributed* and sold the commodity so obtained upon their own account . . ." (*Public Utilities Commission v. Landon*, 249 U. S. 236.)

See also: *Missouri v. Kansas Gas Company*, 265 U. S. 298, 308.

The decision of the Court below goes beyond the confines of the "no man's land" left by the *Attleboro* decision and would permit the Federal Power Commission to encroach upon the lines of recognized state authority, contrary to the intent of the 1935 amendments to the Act.

Section 201 of the Act contains the following declaration of policy:

> "It is hereby declared that the business of transmitting *and selling* electric energy *for ultimate distribution to the public* is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following *and of that part of such business* which consists of the transmission of electric energy in interstate commerce *and the sale* of such energy *at wholesale in interstate commerce* is necessary in the public interest, *such Federal regulation, however to extent only to those matters which are not subject to regulation by the States.*"

It is plain, we submit, upon the face of the Act that Congress sought only to enter the field of regulation, previously unoccupied, with respect to interstate transactions *at wholesale*, and to endow the Federal Power Commission with regulatory authority only in respect to companies whose activities were so related to such transactions that regulation was appropriate and necessary in order to exercise Federal control over the wholesale rates.

In such circumstances, we do not believe that the "transmission *and* sale" can properly be dissociated from one another in construing the provisions of the Act, but that the "transmission" must be so related to the "sale" which the Act was designed to regulate, that jurisdiction by the Commission over facilities for such "transmission", and over a company owning or operating such facilities, will serve some function reasonably related to the "primary purpose" of the Act to regulate such sales.

The case of *Jersey Central Power & Light Co. v. Federal Power Commission*, 319 U. S. 61, affords an example. There the facilities which were held to be under the jurisdiction of the Commission were used for a "transmission" which *preceded* an interstate sale which was subject to regulation by the Commission. This important fact was given due emphasis by the Court when it said:

> "The purpose of this act was primarily to regulate the rates and charges of the interstate energy. If intervening companies might purchase from producers *in the state of production*, free of federal control, cost would be fixed *prior to the incidence of federal regulation and federal rate control would be substantially impaired, if not rendered futile.*"

As we construe that decision, the facilities for transmission of electric energy over which the Commission is given jurisdiction, are those facilities used for a transmission which *precedes* a sale at wholesale over which the Commission possesses regulatory power. And in this connection, it is to be noted that in the *Jersey Central* case, the Court paraphrased the provisions subsection (b) of section 201 in a manner which we think correctly indicates the meaning of the statutory phrase with relation to "transmission." The Court said (p. 72):

> "Subsection (b) declares that the provisions of this part apply 'to the *transmission* of electric energy *at wholesale* in interstate commerce.' This subsection gives jurisdiction over facilities used for *such transmission.*"

Apart from the question of whether the Company here "transmits" electric energy at Bristol (and we submit that it does not), any "transmission" which could be said to occur, would not fall within the realm of "interstate commerce" as defined by the decisions of this Court prior to the enactment of the 1935 amendments to the Act, and does not fall within the

meaning of "transmission of electric energy *in interstate commerce*" as used in section 201 (a) and (b) of the Act.*

The Company does not sell electric energy at wholesale in its Bristol district, and none of such energy is consumed outside of the State of Connecticut. The Federal Power Commission does not possess the power to regulate any rates charged by the Company to its local retail consumers in the Bristol district. Federal regulation or control of any of the facilities, functions or operations of the Company, including accounting, would serve no legitimate purpose whatever, for no "incidence of federal regulation" occurs with respect to the electric energy after it has been delivered to the Company in the State of Connecticut.

At Bristol the Company operates purely and exclusively as a local distributing company. If the Company received no electric energy originating in Massachusetts, no one would contend that any purpose intended by the Federal Power Act would be served by placing the Company under the jurisdiction of the Federal Power Commission. We submit that the mere fact that the Company may receive some energy from Massachusetts, does not bring it within the focus of any purpose intended by the Act.

B. THE COMPANY DOES NOT OWN OR OPERATE ANY FACILITIES SUBJECT TO THE JURISDICTION OF THE FEDERAL POWER COMMISSION.

The Company, in its brief, has amply demonstrated, we believe, that interstate commerce ceases with the delivery of the electric energy to it at Bristol, and that, from the point of such delivery, the Company does not own or operate any facilities for the "transmission of electric energy in interstate commerce" within the meaning of the Act. We concur with the position

* The definition contained in section 201 (c) will be discussed in subdivision B of this Point.

thus taken by the Company and shall not burden the Court with repetitious argument.

However, we would like to discuss briefly the definition contained in section 201 (c) of the Act, which reads as follows:

> "(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States."

This provision does not purport to treat definitively the acts or situations which constitute a "transmission of electric energy in interstate commerce" within the meaning of the Act. It states merely that certain specified "electric energy" is to be "held to be transmitted in interstate commerce", but it does not specify at what point or points, or by what company or companies, in the chain of transmission from the generator to the consumer, a "transmission in interstate commerce" shall be held to take place.

In the present situation, if any electric energy from Massachusetts flows into the Company's facilities at Bristol, there is no question that such energy is "transmitted in interstate commerce" *at some point in or during some part of, its journey.* The definition makes this clear.* But we submit that the definition cannot properly be construed to mean, that *every* facility from the *point of generation* to the *point of consumption* is a "facility for the transmission of electric energy in interstate commerce."

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* It is to be noted that the definition in subsection (c) would exclude from a "transmission in interstate commerce", electric energy which is both generated and consumed in a single state, even though it may be transmitted across a portion of another state without consumption therein. Such a transmission might fall within the definition of interstate commerce as used in some acts (Cf. Interstate Commerce Act, Part II, §203(a), 49 Stat. 544; 49 U. S. C. A. §303(a)), but not within the meaning of this Act. In this connection, subsection (c) has a very definite restrictive effect.

In this we are not in agreement with the Court below, which gave to subsection (c) an effect not intended by the Act. The Court said:

> "The only alternative to such a conclusion is to adopt the argument of the petitioner that a point can be selected in the instantaneous transmission of energy from Massachusetts to Connecticut where interstate transmission ends and intrastate transmission begins. Petitioner suggests that point can be found at the station where it taps the admittedly interstate line. This theory assumes that electricity is carried in little abstract buckets.** The owner of the interstate line carries the bucket on its interstate journey and hands it to the petitioner in Connecticut. And thus the transmission of electricity is made to look like the sale of a pair of shoes. This conception contradicts all we know about electrical transmission. It is the kind of mythological offspring of an unnecessary union between the law and the natural sciences that make scientists (except expert witnesses) tear their hair . . . We believe it was to escape this legal-electric mythology that the Federal Power Act made the test of jurisdiction depend, not on the current definition of 'interstate commerce' but on the actual transmission of electric energy from one state to another without regard to the mechanical means of that transmission. This language gives us no excuse for indulging in the bucket theory of electrical transmission or for differentiating between the different kinds of equipment over which the energy flows in its instantaneous passage *from a generator in one state to a consumer in another.* It makes the test of whether such energy is

** The assumption relating to the carrying of electricity "in little abstract buckets" appears to have been made wholly by the Court below. No such assumption appears necessary; nor is it necessary to indulge in any "mythology" to explain the plain fact that the Company's vendor delivers electric energy to the Company at Bristol. Perhaps the very concept of a "transmission" of electric energy might make "scientists tear their hair", but the Act is based upon such concept, and we submit that what may be "transmitted", may be delivered from one party to another without the use of "abstract buckets". (Cf. *Public Utilities Commission* v. *Landon*, 249 U. S. 236.)

> actually transmitted between the two states the simple and practical one of reading a meter."
> (*Connecticut Light & Power Co. v. Federal Power Commission*, 141 F. (2d) 14.)

Under such a construction of subsection (c), which gives no effect to the manifest purpose of the Act as recognized by this Court, and no effect to the provisions of subsections (a) and (b) of section 201, the interstate journey of electric energy would not end short of its consumption by the ultimate retail consumer.

We submit that subsection (c) when it used the expression "transmitted in interstate commerce", refers to a transmission which is within the intended scope of the Act as shown by the other provisions to which we have referred, in subsections (a) and (b) of section 201. It was not intended to bring under the jurisdiction of the Commission every facility whatever through which the electric energy may pass, but only those facilities over which the Commission was *intended* to have jurisdiction under the provisions of the Act.

This reasoning was applied by this Court in the *Jersey Central* case, *supra*, in the discussion found in 319 U. S. at pages 70-72. Referring to the argument of the petitioner there, the Court said, in part:

> "But the argument, we think gives no effect to the definition of 'transmitted in interstate commerce' as *used* in this act. In the note below there is set out the pertinent *provisions* of section 201 *which indicate the meaning given the phrase*, which *provisions* are italicized for quick reference.* *Subsections (a) and (b) show the intent to regulate such transactions as are beyond state power under the Attleboro case, supra.* Subsection (c) defines the electric energy in commerce as that 'transmitted from a State and consumed at any point outside thereof . . . The definition

* The note referred to contains the provisions of subsections (a), (b), (c) and (e) of Section 201.

> was used to 'lend precision to the scope of the bill'. It is impossible for us to conclude that this definition means less than it says and applies only to the energy at the instant it crosses the state line and so only to the facilities which cross the line and only to the company which owns the facilities which cross the line. *The purpose of the Act was primarily to regulate the rates and charges of the interstate energy. If intervening companies* might purchase from producers *in the state of production, free of federal control,* cost would be fixed *prior* to the incidence of federal regulation and *federal rate control would be substantially impaired, if not rendered futile.*"

Thus, the Court did not apply subsection (c) as a "definition" of "transmitted in interstate commerce", without reference to the purpose of the Act and its *other* provisions, but looked to the provisions of subsections (a) (b) (c) and (e) "which [the Court said] indicate the meaning given the phrase". And in that case the Court held, in accord with the primary purpose of the Act to regulate interstate wholesale rates, that the facilities of *Jersey Central* were used, as the Court later said, for "the transmission of electric energy *at wholesale* in interstate commerce."

We submit that when the same process of analysis as that followed by the majority of the Court in the *Jersey Central* case, is applied here, it is manifest that "the definition of 'transmitted in interstate commerce' as *used* in this Act," does not include any of the operations or facilities of this Company from the point at which it receives the electric energy from its vendor.

The Court below committed grave error when it gave unbridled effect to subsection (c) and, at one point, said:

> "Therefore, whether or not the facilities by which petitioner distributes energy from Massachusetts should be classified as 'local' is not relevant to this case. The sole test of jurisdiction of the Commission over

> accounts is whether these facilities, 'local' or otherwise, are used for the transmission of electric energy from a point in one state to a point in another."

Such an application of subsection (c) would bring under the jurisdiction of the Commission, facilities by which the energy is received by the Company wholly within the State of Connecticut, after all intended purposes of Federal regulation have been served, and the definition in this single subsection, without reference to subsections (a) and (b) would be used to carry the regulatory power of the Commission into the field of local regulation theretofore occupied exclusively by the states. Such was not the intention of Congress and is not the law.

We concur in what the Company has said in its brief with reference to the "but" clause. Whether that clause be construed as an exemption of facilities "used in local distribution", even though they are also used for "the transmission of electric energy in interstate commerce", or whether the clause be construed as one inserted for purposes of clarification, to be construed in harmony with the provisions relating to "transmission in interstate commerce", we think it is clear that the Commission was not intended to have jurisdiction over the facilities of a local distributing company such as are involved in this case.

Since the Company here does not own or operate facilities subject to the jurisdiction of the Commission, it is not a "public utility" within the definition and scope of Part II of the Act, and therefore, is not subject to accounting regulation by the Commission under Part III of the Act.

Point II

The decision of the court below would open up a vast new field of Federal Regulation, contrary to the intention of the Congress as embodied in the Federal Power Act.

The questions presented here, relating to the receipt and local distribution of electric energy within a state, by a local distributing company, were not involved in *Jersey Central Co. v. Federal Power Commission* (319 U. S. 61), nor in *Hartford Electric Light Co. v. Federal Power Commission* (131 F. 2d 953, certiorari denied 319 U. S. 741) where the utility companies before the Courts were generating or transmitting electric energy which *subsequently* crossed a state line and was consumed in another state.

The decision below, unless reversed, would open up a vast new field of jurisdiction for the Federal Power Commission, i.e. over local distributing companies which are fully subject to state regulation, simply because electric energy which they purchase from others may include energy originating in another state. The Court below failed to recognize that no purpose intended by the Federal Power Act would be served by the exercise of such Federal jurisdiction since wholesale rates for interstate sales of such electric energy are subject to regulation by the Federal Power Commission, and the retail rates charged by such distributing companies are subject to exclusive regulation by the state commissions.

In determining, under such circumstances, that the Company is a "public utility" within the meaning of the Federal Power Act, the Court below misconstrued the provisions of the Federal Power Act in such fashion as to expand the application of the Act beyond all bounds of reasonable interpretation. The decision, unless reversed by this Court, will affect the numerous similar situations existing in all parts of the United

States and will seriously prejudice the rights of the states to exercise powers of regulation over utility companies which were intended to be preserved to them by the provisions of the Federal Power Act.

Senator Wheeler, Chairman of the Interstate Commerce Committee, and a co-sponsor of both the Federal Power Act and the Public Utility Holding Company Act of 1935, stated in that Committee's report on the revision of the original bill (Sen. Rep. No. 621, 74th Cong., 1st Sess.):

> "As has been stated, the committee has liberalized title II of the original bill and endeavored to remove all possible grounds for the charge that it imposes harsh or burdensome restrictions upon the electric industry. The revision has also removed every encroachment upon the authority of the States. The revised bill would impose Federal regulation only over those matters which cannot effectively be controlled by the States. The limitation on the Federal Power Commission's jurisdiction in this regard has been inserted in each section in an effort to prevent the expansion of Federal authority over State matters" (p. 18).

The result of the decision of the Court below is to place under the supervision of the Commission all of the matters which fall within its regulatory powers over a "public utility" under the Federal Power Act, including among others, the establishing of interconnections with other "public utilities" for sale to or exchange of energy with them (§202); supervision over mergers and consolidations, as well as over the purchase of securities of another "public utility" (§203); the ascertainment of the cost of the company's property and the depreciation existing therein (§208); the prescribing of the systems of accounts and the supervision of the keeping of the accounts of the company (§301); supervision over the depreciation accounting of the company and the methods of accruing depreciation therein (§302); and the filing of annual reports (§304).

The petition of the Company for writ of certiorari states that, according to a survey made by the Edison Electric Institute, there are over 1,000 local electric distributing companies located in 46 states of the United States, which purchase power from larger power systems, the power supply of almost all of which has some component from an interstate source. Doubtless there are numerous situations throughout the country which are similar to the situation of the Company here at Bristol. Under the decision below, all such companies similarly situated would be subject to the general jurisdiction of the Commission with respect to the aforesaid matters.

The decision below therefore, is one of widespread application throughout the United States and is of great importance to the various states and their citizens.

In the circumstances presented, the assertion and exercise of purported jurisdiction over the Company is not only illegal, but would necessarily interfere with the power of the State of Connecticut to regulate local distributing companies.

The Company, under the decision below, would not only be required to comply with the accounting requirements of the Public Utilities Commission of the State of Connecticut, but also with those of the Federal Power Commission. In the case of conflicts of decision between the two regulatory bodies as to specific items in the accounts, the Company would be required to comply with *both* decisions.

If the Commission continued to assert general jurisdiction over the Company, as it undoubtedly would if the decision below is permitted to stand, many other possibilities of conflict would be present as to matters where dual regulation is involved. For example, the Company might seek and obtain the approval of the State Commission to the acquisition of securities of a company which is a "public utility" under the Act. The Fedral Power Commission would again assert jurisdiction,

(Cf. *Jersey Central Power & Light Co. v. Federal Power Commission*, 319 U. S. 61) and it might deny its approval to the acquisition. The same possibility of conflicts would exist with respect to all other matters as to which the Federal Power Commission exercises regulatory power under the Federal Power Act. The nullification of the power of the State of Connecticut to regulate the business of the Company in such circumstances is apparent.

Such interference with the regulatory powers of the states may be a necessary concomitant where it is required in order to carry out the purposes of the Federal Power Act. Where no purpose of the Federal Power Act is to be served, such interference is unwarranted.

If it be true that one of the purposes of the Federal Power Act, as stated by the Court below, is "to correct abuses of write-ups, inflation of accounts and similar practices which have on occasion been found in the utility industry", such purpose obviously could exist only with respect to companies over which federal control is imposed. Certainly it was not the intention of Congress to correct such "abuses" with respect to local distributing companies whose supervision lies exclusively with the states under the provisions of the Act. If such "abuses" exist in such companies, the state commissions possess plenary powers for their correction and it is no concern of the Federal Power Commission.

Conclusion

THE STATE OF CONNECTICUT JOINS THE COMPANY IN REQUESTING THAT THE JUDGMENT APPEALED FROM BE REVERSED AND SET ASIDE.

Respectfully submitted,

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